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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,834	01/20/2004	Jack J. Richards	4244P2751	4062

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EXAMINER	
COLE, ELIZABETH M	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/761,834	RICHARDS, JACK J.	
	Examiner	Art Unit	
	Elizabeth M. Cole	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-30 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. Claim 1 recites "an impregnated blackout film". The claimed structure is not clear because it is not clear how a film can be impregnated. Is the film porous? It appears that Applicant is attempting to claim a film which comprises a filler rather than a material which is impregnated with another material. In claims 3 and 4, for example, does the metal and/or aluminum ingredient which impregnates the film refer to coating of metal/aluminum or does it refer to filler particles which are mixed with the components which make up the film. Also in claim 1, it is not clear what is meant by said impregnated blackout film "adapted to" achieve light inhibition and thermal diminution. How is the blackout film adapted, i.e., how is the structure of adapted impregnated film different from the structure of an un-adapted impregnated film? The same issues are present in the other independent claims.

3. Further, in claim 12, it is not clear whether the second fabric set forth in the last three lines of claim 12 is claimed as part of the drapery fabric construction, or if the claim intends to recite only that the draper fabric construction can be aligned with a second fabric. For purposes of the art rejection below, the construction of claim 12 will be interpreted as comprising a single fabric layer.

4. In claim 27, line 16, it appears that "coating" should be "coupling".

5. In claim 29, line 17, it appears that "coating" should be "coupling". Also in claim 29, it is not clear what is meant by providing at least an ingredient for an extruded

impregnated blackout film and then extruding said ingredient to the first side of said fabric. The ingredient alone would not form the blackout film since the film is recited as being impregnated with the ingredient. The claimed method is not clear.

6. In claim 30, line 13, it appears that "coating" should be "coupling".

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-9, 19-23, 25, 29, 32-33 of copending Application No. 10/082,039. Although the conflicting claims are not identical, they are not patentably distinct from each other because discloses a blackout drapery fabric comprising a blackout film, an acrylic latex layer and a fabric layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1,7, 9, 10-12, 15-17, 22, 24, 25, 26, 27 , 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Samowich, U.S. Patent No. 4,409,275. Samowich discloses a drapery material which comprises a substrate which may be a woven or nonwoven fabric of natural or synthetic fibers, which may further comprise a flock layer., (col. 2, lines 19-37). Cotton fabrics treated with fire retardants can be used as the substrate, (col. 3, lines 21-24). An acrylic foam is applied to the substrate. The foam can include dark pigments to produce a blackout effect. Col. 3, lines 6-20. The foam can comprise fire retardants, (col. 4, lines 14-19). A film of an acrylic latex is applied to the foam, (col. 4, lines 47-57). Both the substrate and film side can comprise a layer of flock in order to produce a material having two functional surfaces. Col. 2, lines 25-30.

11. Claims 1-3, 9-11, 12, 15, 17, 22.-24, 26, 27, 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Leaderman, U.S. Patent No. 5,741,582. Leaderman discloses blackout curtain comprising a textile substrate having an inner surface, an adhesive layer which comprises an opaque pigment which corresponds to the claimed impregnated blackout film and a second layer of adhesive which may be an acrylic foam. The textile substrate may comprise woven or nonwoven fabrics comprising cotton, polyester or other man made or natural fibers. The first adhesive layer is preferably acrylic but may also comprise polyurethane. See figure 4 as well as col. 2,

line 54 – col. 3, line 35. Flame retardants may be added to at least one layer. See col. 4, lines 23-34.

12. Claims 1-5, 9, 12, 14-15, 17, 22-24, 26, 27, 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Ferziger et al, U.S. Patent No. 4,677,016. Ferziger discloses a blackout curtain comprising a woven textile substrate which is coated with multiple layers of foam latex, (see col. 2, lines 20-35). The foam latex may comprise polyvinyl chloride, acrylic, ethylene vinylidine chloride and others. See col. 3, lines 30-39. The foam latex comprises flame retardants, See col. 3, lines 54-59. The foam coatings include pigments which impart opacity to the layers, such as titanium dioxide, carbon black and aluminum. See col. 6, lines 50-55.

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claim 6 is, rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over each of Samowich, Leaderman and Ferziger et al. Each of the cited references discloses the claimed structure as set forth above. While none of the references disclose the claimed optical rating, since the claimed structures are identical, it is reasonable to presume that the structures would possess the claimed optical rating. When the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not

the reference inherently possesses properties which anticipate or render obvious the claimed invention the examiner has basis for shifting the burden of proof to applicant as in In re Fitzgerald, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § § 2112-2112.02.

15. Claims 6, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Samowich, U.S. Patent No. 4,409,275. Samowich teaches a drapery material as set forth in paragraph 10 above. Samowich teaches flock may be applied to either side of the drapery in order to form a pleasant and decorative surface. While Samowich teaches flock, it does not disclose the particularly claimed types of fibers. However, since Samowich teaches that any natural or synthetic fibers can be used to make up the various fibrous layers, (see col. 2, lines 19-30), it would have been obvious to have selected the particular fibers employed which are well known and conventional fibers such as cotton and polyester for the flock fibers.

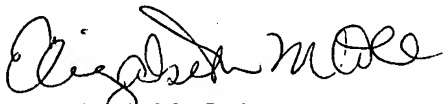
16. Claims 13, 18-21, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over each of Samowich, Leaderman and Ferziger. Each of the cited references discloses the claimed structure as set forth above, however, each differs from the claimed invention because none of the references discloses adding a second fabric layer to the first fabric layer. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have added an additional fabric layer in order to improve the appearance, drape, etc of the fabric. It is noted that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.



Elizabeth M. Cole
Primary Examiner
Art Unit 1771

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